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MALABAR LAW :—MARRIAGE.

So far as decided cases go, Malabar Law does not recognise marriage as a legal institution and in spite of the pious hopes expressed by Mr. Justice Moore in his book on Malabar Law, the prospect of its being recognised as such, seems to be very remote. It is, indeed, very difficult for English lawyers steeped in the notions and shibboleths of English Law to reconcile themselves to the idea that a sexual union "on which no rights of property or inheritance are founded, terminable at the will of either party, subject at best to certain conventional restraints among the more respectable classes such as a money payment and the control of the relations," could constitute a valid legal marriage. The decision in the contrary sense was arrived at in a case under the Aliyasantana Law, from South Canara, which cannot in truth be said to countenance the loose theory of sexual relations prevalent in Malabar. Kerala Mahatmya, an apocryphal work which purports to embody the rules laid down by Parasurama for the guidance of the country reclaimed by him from the sea as Kerala is believed to be has this among other rules :—among the folk of this land " In this my country, among all castes, among all Samantas and among all other women likewise, let there be no chastity. But for the wives of the Brahmanas and Dwijas let the rule of chastity stand in regard to them. With other residents let there be no rule of chastity. " Notwithstanding this rule, marriage is recognised as a social institution in Malabar and all evidence goes to show that the sexual relations there by no means compare unfavourably in point of fixity and purity with the sexual relations obtaining elsewhere in India. The idea that sexual

1. *Koraga* v. *The Queen* (1883) I. L. R. 6 M. 374.

relations are loose in Malabar is largely due to the fact that unions between Brahmins and certain other higher classes and Nayar ladies under forms usually adopted for the marriage of people belonging to the same caste are recognised, though the idea of legal marriage is necessarily excluded. As observed by Mr. Justice Muthusamy Aiyar in his Marriage Commission Report the fact that even Brahmins to whom the forms could have no significance are made to go through them, speaks strongly for the binding force of the marital customs. It sometimes happens that the same castes are governed at different places by different laws; for instance the Tiyas are governed in North Malabar by the Marumakkathayam Law while in the south they are governed by the Makkathayam Law. There is no prohibition against marriage between them and the same forms are gone through at those marriages as at the marriages between purely Marumakkathyam couple. The issue inherit from their father as well as participate in the tarwad property of the mother. Among the Jains of Kanara some are governed by the Aliyasantana law while others are by the ordinary Hindu Law and marriage is not prohibited among them. The ordinary forms of marriage are gone through and the children inherit to both the parents. Some Nambudri Brahmans are governed by the Marumakkathayam Law but their women are married in the usual forms of Brahmin marriage and for all but purposes of inheritance the marriages are looked upon as of the same binding force as other Brahmin marriages. The Moplas governed by the Marumakkathayam Law afford another illustration. Among the Aliyasantana people, children participate in the funeral ceremonies of their father; indeed, the Bhutala Pandya's Kattukattalai, the somewhat discredited work which may however be valuable as a record of social usages—says in one of its Kattalais : "while the members of the family have to observe the birth pollution and take the property the children alone participate in the father's merit and demerit and observe pollution on his death". There is nothing really in the forms themselves that need prevent them being regarded as a source of legal relationship.

Sambandam is the generic term applied in Malabar to marriage as understood by the Marumakkathayam communities. It has certain local varieties with slightly varying incidents. For

instance, there are three different forms in North Malabar Podamuri, Vidaram Kairuga and Usham Porukka. The peculiarity of Podamuri is that the bridegroom has to give a piece of cloth to the bride. This formality is not gone through in the other two forms but till Podamuri is performed, the bride is not taken to the husband's house. The term applied to the marriage of Tiyas of North Malabar is *Mangalam* A small amount is paid under this form to the karnavan of the bride as *bride kanam,* strongly reminiscent of the bride-price under the Hindu Law. "Sambandam" is the term in general use in South Malabar. "Sambandam" differs from Podamuri in that gift and acceptance of cloth forms no part of the ceremony. In parts of South Malabar, betel-nuts are given instead of cloth. In Kidakkora which is the form in Palghat Taluq, the formal permission of the senior lady of the Tarwad is taken for cohabitation with the bride for six months. None of these forms is observed in Kovilogams. A ceremony called Veli, in some Kovilogams called Kalyanam, is celebrated with great pomp and at considerable expense, but this corresponds only to Talikattu Kalyanam among the Nairs and bears no analogy to marriage or Sambandham. It is ordinarily performed before maturity and the ceremony consists in the Koil Tamburan tying a piece of gold round the neck of the bride. In the Kovilogams of the Zamorin the tali tying is done by a Raja of Kranganore. If the Koil Tamburan is willing, he consorts with the lady; if not she consorts with a Nambudri Brahmin without any further ceremony. She may put him away at pleasure and take another in his place with the consent of the senior Raja of the Kovilogam for the time being. In fact the higher you go, the looser the sexual relations seem to be. Corresponding to the Veli ceremony, the Nayars and the Marumakkatayam Tiyas have their Talikattu ceremony. According to custom, every girl must go through this ceremony before she attains puberty ; otherwise she is considered to lose her caste. Failure to perform the Talikattu ceremony will be such a gross breach of social etiquette that a Karnavan may be liable to be deposed on that ground alone. In its essence (like the Veli ceremony) this also consists in the tying of a piece of gold called Tali round the girl's neck. In North Malabar it is done by a low class Brahmin ; in South Malabar by a young man belonging to the caste. As a religious ceremony it is taken to

give the girl a marriageable status and in North Malabar she is addressed thereafter as *Amma*. But in relation to marriage it has no other significance than that no girl can contract marriage without going through it. The tali may be removed after the 4 days' ceremony. It does not confer any right on the person tying the tali to claim the girl as his wife. Among the Marumakkathayam Tiyans a woman of the barber caste used to tie the tali but now the practice has been substituted of the proposed husband's sister or even the husband himself tying the tali. A Nayar female is not at liberty to marry a Nayar of an inferior sub-division. Neither a Nayar male nor female can marry outside, that is, into an inferior caste. If a Nayar woman takes a husband from an inferior sub-caste, she is excluded from social intercourse though not from the temple or tank. This is known as the rule of Anuloma and Pratiloma. If a Nayar female consorts with a Nayar male of equal or higher caste without any form of marriage, she is not put out of caste provided he acknowledges the paternity of the child. This is used as an argument against Sambandam being recognised as a legal form in the Majority Report of the Malabar Marriage Commission. We doubt however if even in the East Coast, a woman would lose caste under similar circumstances; the Shastras do not contemplate a loss of caste except among the first three classes under those circumstances.

In North Malabar, a woman crossing the river called Korapuzhai is supposed to forfeit her caste and the orthodox belief is that it is not competent for her to marry in South Malabar which lies to the south of the river but the men of North Malabar are not under such disability. This custom is common both to Nayars and Tiyas. The custom is being slowly departed from. It seems to be more a geographical prejudice than a recognised impediment to marriage.

As regards marriageable age, there is no customary restriction; marriage before puberty is permitted though it is neither obligatory nor common. A remarriage is not forbidden by custom on the death of the husband. With reference to prohibited degrees of relationship the rule founded on consanguinity is that persons descended from a common female ancestor are not at liberty to marry one another; with

reference to forbidden affinity, the rule of prohibition is considered to be the same, the members of the Tarwad of the deceased wife and husband being ineligible. In South Malabar there is a difference of opinion; some confine the prohibition to such relations by affinity as stand in the relationship of parent or child. The marriage seems to have no connection with religious observances.

As in Malabar, there is a social and customary marriage in South Canara also though there is nothing corresponding to Talikattu Kalyanam. There is no restriction as to marriageable age or on polygamy. There is no objection corresponding to Korapuzhi objection, nor is there the doctrine of Anuloma and Pratiloma. On divorce it is customary to refund Tirodacee or payment made by the husband at the time of marriage which varies from 2 to 5 Pons *i.e.*, 8 to 20 Rs. There is one curious rule as regards re-marriage of widows. It is only a widower that is permitted to marry a widow and there is a special form for such marriages. In the ordinary forms of marriage, there is the practice of Dhare or joining of hands with a gindi or vessel of water upon them placed by the parents and Karnavans of the couple. Among the Billawas and some families of Bants also in the Coondapore and Udipi Taluks the practice of even pouring water seems to prevail. The common belief, however, is that water ought not to be poured as there is no change of family or gotra by the marriage. Unlike among the Marumakkattayam people, the children of a deceased man take part in the funeral ceremonies; in fact according to the Aliyasantana Kattukattalai they alone have pollution. Widows cannot take part in auspicious ceremonies even after remarriage.

People belonging to the same bali [corresponding to the gotra] cannot marry. Not all balis can but only certain of them. A person can marry his mother's brother's daughter and her descendants or his father's sister's daughter and her descendants, but he cannot marry his father's brother's daughters or their descendants. In North Malabar and South Canara, the practice is for the wives to live with their husbands in the latter's tarwad home and it is considered the duty of the karnavan to provide for their maintenance. The right of the Anandravan to have the cost of maintaining his wife included in his allowance

for maintenance was recognised in *Parvathi* v. *Kamaran* [1]. It is believed that the same rule will be applied in South Canara. In South Malabar the practice seems to be for ladies to live in their own tarwards and receive visits from their husbands. The former practice is gaining ground even in South Malabar. Accordingly in recent cases the right of the women governed by both the systems to claim maintenance from their tarwad during their stay with their husbands has been recognised. Polyandry appears to have existed among certain classes of Nayars but seems to be fast dying out. But it is not peculiar to Marumakkathayam people for we find that among the Makkathayam carpenters in South Malabar the practice obtains though rarely.

The first attempt at legislation was made in the Malabar Marriage Act of 1896. It is applicable to Hindus following the Marumakkathayam and Aliyasantana Laws of Inheritance. Under this Act, a Sambandam between Hindus both or either of whom follow the Marumakkathayam or Aliyasantana law of inheritance may be registered. Sambandam denotes an alliance between a man and a woman by reason of which they in accordance with the custom of the community to which they belong or either of them belongs, co-habit or intend to co-habit as husband and wife. Registration is subject to the following conditions :—

(i) Neither party must be subject to a personal law according to which he or she cannot validly contract marriage. [This excludes possibility of marriage between Brahmins and Nayars.]

(ii) The customary rules of consanguinity and affinity are to be observed.

(iii) Neither party should have a husband or wife living whose Sambandam has been duly registered and is valid.

(iv) The parties must not belong to communities between whom marriage is by custom prohibited.

(v) The customary ceremonies must be observed.

(vi) If a party is a minor, legal guardian's consent must be obtained. The Act provides for notice of the registration to be given to the other party to the marriage, to the guardians and the managing members of the tarwards or families of the couple.

1. (1883) I. L. R. 6 M. 341.

It is open to the persons entitled to notice to object to registration on the ground that it contravenes any of the conditions laid down above. The right to object is given not only to these persons but also to any member of the tarwad of either of the parties, to even an attaladakam relation. In the event of an objection being duly taken registration is to be postponed for 4 months within which time the objector may file a suit for a declaration that the marriage cannot be registered and produce a copy of the plaint and the registration will be postponed pending the decision of the suit. A marriage once registered shall be invalid only on one of the following grounds,

(i) Incapacity under the personal law to validly contract a marriage with the other party.

(ii) Relationship through a common ancestor who stands to each of them in a nearer relationship than great great grandfather or great great grandmother, which the custom regards as a bar to marriage.

(iii) Either party having a wife or husband living whose marriage is registered under the Act and is valid and in force,

If notice is not served on any person entitled thereto, it shall be competent for him to sue for cancellation of marriage on all the grounds available before registration, within 3 months of the registration. On the application of either party the court may declare the marriage to be dissolved. If the dissolution is without the consent of the wife, she is entitled to maintenance so long as she remains a Hindu and is in-caste and does not contract another Sambandam and provided also she was not guilty of adultery before dissolution (uncondoned) Both the wife and the issue of the marriage are entitled to maintenance from the father. The defences to such a claim are said to be the same as are open under the Hindu law. The husband is the guardian of a wife after her 14th year and the father, of the minor children. The guardianship does not extend to the Tarwad property. Rights of inheritance are conferred on the widow and children to the extent of half of the self-acquired or separate property of a deceased intestate, if there are members of the tarwad living; if there are not, to the whole. The property is to be divided equally between the wife and children. Similarly half of the wife's property devolves on her children in equal shares and in the event of no member of the tarwad surviving,

the whole of such property devolves on the husband. The rule as to succession to a woman's property are less liberal to the children than the rule eventually declared by the Full Bench to be the rule applicable to them; not to say that it ignores the grand children and other descendants altogether.

The Act has not been popular. Very few marriages have been registered under it. The real impediment to the success of the Act is that the advantages of registration are too few to compensate for the trouble and courage involved in the registration. It retains the old forms and as such from the point of view of sentiment, the new marriage does not appeal more strongly than the old. The assumption of the Act that the customary marriages are not real marriages and the idea that a registration before an officer to whichsoever creed or nationality he might belong would constitute the marriage a legal marriage has naturally arrayed all conservative forces and prejudices against it. The Act, it will be noticed, is only permissive. The Travancore Government has been bolder. It has passed a Regulation called Nayar Regulation which declares that the conjugal union of a Nayar female subject to the restriction of consanguinity and affinity with a Nayar male or any male other than a Nayar with whom a conju union is permitted according to recognised social custom and usage openly solemnised by the presentation of cloth to the female by male, whether so solemnised before the date on which the Regulation comes into force and subsisting on such date or so solemnised after this Regulation, shall be deemed to be a valid marriage for all legal purposes. In conjugal unions entered into after the Act, if the male is below 18 and the female below 16, the consent of the legal guardian is to be taken for the marriage. Such marriage is dissolved only in one of the following ways ;

(i) by death of either party,

(ii) by mutual consent evidenced by a registered document,

(iii) by a formal order of dissolution which can be had on application to court, provided that if the husband is the applicant he has to offer compensation except when the respondent has renounced Hinduism. The court may award compensation not exceeding 2000 Rs. Subsequent marriage of a female during the continuance of a prior marriage is void,

The wife and minor children are declared entitled to maintenance provided the wife does not live in adultery or has not renounced Hinduism. In the case of a non-Nayar father, the widow and minor children are entitled to be maintained out of his self-acquisition or separate property provided that the widow shall not be entitled to maintenance if she marries again, leads an unchaste life or has renounced Hinduism. The husband is the legal guardian of the wife and the father, of the minor children if they are maintaind by him and live with him or under his protection. On the death of a Nayar male, his wife and children get the whole of his self-acquired or separate property if he has no marumakkathayam heir; if he has, the two classes of heirs take each a half. The feature of this legislation is that it proceeds on the lines of least resistance. It recognises sambandams with non-Nairs but in that case there is no right of inheritance at all. Polygamous unions are permitted. No registration is required for the marriage. The rule as to succession is defective in that it does not provide for grand-children but the clause being even as it is a measure of substantial relief is likely to be welcomed.

SUMMARY OF ENGLISH CASES.

Banbury *v.* Bank of Montreal. 1918 A. C. 626.

Statute of Frauds Amendment Act 1828 (Lord Tenterden's Act) S. 6—Whether applies to actions other than for fraudulent representation "person" Whether includes a corporation—Practice—Question of law not raised at the trial whether can be allowed to be raised in the Court of Appeal.

S. 6 of Lord Tenterden's Act, which runs as follows:—"No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon [*sic*], unless such representation or assurance be made in writing, signed by the party to be charged therewith," is restricted in its application to cases of *fraudulent* representations only.

[The reader's attention is invited particularly to the discussion by Lord Atkinson to the conditions for giving a

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restricted construction to enactments general in their language. Ed.]

The word "person" in the section includes a corporation.

Held by Lords Atkinson, Parker and Wrenbury (The Lord Chancellor and Lord Shaw dissenting). If in an action tried with a jury the defendant does not raise the point at the trial, that there is no evidence to go before the jury, he is not precluded from raising the point in the Court of Appeal and asking for judgment on that ground.

London Joint Stock Bank Limited *v.* Mac Millan and Arthur. 1918 A. C. 777.

Bank-Customer—Negligence in drawing cheque—Alteration in the amount of the cheque by forgery—Whether Bank liable for having paid the amount entered by forgery.

Where a cheque is drawn by a customer on his bank and the cheque when it was signed by him showed only an amount in figures but left enough space on both sides of the figure so as to enable other figures to be entered, and the space for the amount in words was left blank and the servant of the customer entered a larger amount in the space of the amount in words and added figures on both sides of the original figure so as to show a larger amount and no alteration was visible on the cheque and payment was made by the bank of the larger amount, held that the bank was entitled to debit the customer's account with the full amount of the cheque.

1909, A. C. 559 not followed.

The relation between banker and customer is that of debtor and creditor with a super-added obligation on the part of the banker to honor the customer's cheques if the account is in credit. A cheque drawn by a customer is in point of law a mandate to the banker to pay the amount according to the tenor of the cheque; and the customer is bound to exercise reasonable care in drawing the cheque to prevent the banker being misled. If he draws the cheque in a manner which facilitates fraud, he is guilty of a breach of duty as between himself and the banker and he will be rosponsible to the banker for any loss sustained by the banker as a natural and direct consequence of this breach of duty.

Per Lord Shaw.—When a customer makes a cheque payable to himself or bearer it is entirely at his option when to present it. The responsibility for what occurs between signature and presentation, a period in his control, lies entirely with him.

Hood *v.* Anchor Line (Henderson Brothers) Limited. 1918 A. C. 837.

Contract—Reasonable notice of condition of the contract—Action by passenger for personal injury—Condition on ticket limiting ship owner's liability.

Where a ticket is issued by a steamship company enclosed on an envelope on the front of which is printed in capital letters a notice requesting the passenger to read the conditions of the enclosed contract and the ticket itself contains a notice on its face that it is issued subject to the conditions thereinafter set out, one of which limits the ship-owner's liability to 10., the ship-owners have taken all reasonable steps to bring to the knowledge of the passenger the existence of the conditions and the passenger is bound by them.

LP2283

Permanent Trustee Company of New South Wales *v.* Fels. 1918 A. C. 879.

Evidence—Document—Secondary evidence—Proof of ancient documents.

At common law it would be necessary to prove that an alleged copy of a document was a copy in fact, either by calling the man who made it or some person who had compared the copy and the original and proved that the one faithfully reproduced the other. No signature however trustworthy nor authentication by the most unimpeacheable official can take the place of the evidence required at common law to prove that a certain document is the copy of an original that is not produced.

A copy produced from a proper custody where it remained for over 30 years cannot be admitted in evidence without the above particulars being spoken to, where the original is in actual existence and a copy is capable of being obtained and properly proved.

Hip Foong Hong *v.* **H. Neotia and Co.**, 1918 A. C. 888.

Practice—New trial—Grounds for ordering—Dicovery of fresh evidence—Fraud or surprise in obtaining judgment-Perjury and bribery of witnesses.

In all applications for a new trial the fundamental ground must be that there has been a miscarriage of justice. If no charge of fraud or surprise is brought forward, it is not sufficient to show that there was further evidence that could have been adduced to support the claim of the losing parties ; the applicant must go further and show that the evidence was of such a character that it would, so far as can be foreseen, have formed a determining factor in the result. Such considerations do not apply to questions of surprise and still less to questions of fraud. A judgment that is tainted and affected by fraudulent conduct is tainted throughout and the whole must fail.

In the present case which was an application for re-hearing on the ground of perjury and bribery, their Lordships held on the evidence that they were not established.

Their Lordships also held that in the case of fraud operating to re-open a judgment procedure by motion and affidavit is not the most satisfactory and convenient method of determining the dispute. The fraud must be alleged and proved and the better course would be to take independent proceedings to set aside the judgment upon the ground of fraud when the whole issue can be properly defined, fought out and determined.

Muttunayagam *v.* **Brito** 1918 A. C. 895.

Adverse possession—Co-owners-Possession referred to lawful title.

Possession of one co-tenant cannot be held adverse to the other co-tenants, because possession is never considered adverse if it can be referred to a lawful title.

Hill *v*, **Peters** : (1918) 2 Ch. 273.

Trust—Chose in Action—Declaration of Trust—Mortgage interest in equitable interest—Personalty—Breach of Trust—Notice Priority.

The defendant was the beneficiary of a mortgage debt upon a reversionary interest in personalty settled by will. The trustees executed a declaration of trust in favour of the defendant. Afterwards the trustees in breach of trust, in fraud of their cestui que trust, without disclosing the existence of the trust purported to assign the interest by way of mortgage to the person under whose will the plaintiffs claimed, and handed over to the executors the instrument creating the interest. The plaintiffs gave notice of their mortgage to the trustees of the will, and brought an action claiming priority over the charge in the defendant's favour.

Held, that the title of the *cestui que trust* did not require to be perfected by notice and that the defendant had not done or omitted to do anything to forfeit the priority she was entitled to on account of her charge being the first in point of time.

The principle on which the rule in *Dearle* v. *Hall* [3 Russ. 1] is founded, which regards the giving of notice by the assignee as the nearest approach to the taking of possession, has no application to the beneficiary who has no right to possession himself, and who can only assert his claim to receive through his trustee.

In re **Dunstan** : **Dunstan** *v.* **Dunstan** (1918) 2 Ch. 304.

Will—Construction—Absolute gift of Freehold to one person —Gift after his death of whatever remained to another—Detraction from grant—Death of the first-named donee in life-time of testator—Effect on subsequent bequest.

A testatrix by her will gave all her freeholds absolutely to A, subject to the bequest that whatever remained after A's death should pass to B. A predeceased the testatrix.

Held, that the doctrine of repugnancy did not apply as the gift in favour of A failed, and the gift to B was accelerated and took effect.

"The doctrine of repugnancy has no application to gifts which fail; the doctrine does not come into operation until somebody takes, and it is only those limitations which defeat the interest some one takes that are void, on the ground that they are inconsistent with what is given to him." [Per Lindley, L. J. in *In re Lowman*, (1895) 2 Ch. 348.]

In re **Lewis: Busk** *v.* **Lewis** : (1918) Ch. 308.

Will—Construction—Chattels in Mansion house to be enjoyed with Mansion house—Remainderman in tail—Chattels not to vest in tenant in tail until he attains the age of twenty-one —Vesting—Actual possession if necessary.

"According to Englisn Law, if money or chattels are settled so as to be held and enjoyed by the persons from time to time entitled to the possession of settled real estate, they vest in the first. tenant-in-tail immediately on birth." Where as in the present will, a provision is inserted that they are not to vest in any tenant in tail by purchase unless he lives to the age of twenty-one, they vest in the first tenant in tail who attains the age of twenty-one-immediately on his attaining the said age.

In the absence of apt words postponing vesting until the estate of a tenant in tail by purchase becomes an estate in possession, the chattels become vested in such remainderman in tail, although he had no actual possession on account of his predeceasing the life-tenant

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In re **Lee: Treasury Solicitor** *v.* **Parrott**: (1918) 2 Ch. 320.

Donatio Mortis Causa—Registered Exchequer Bonds issued by Post Office—Exchequer Bond deposit book—Delivery of, before death.

Where a person entitled to a registered Exchequer Bond for £ 100, which he had acquired through the Post Office, and in respect of which he held an "Excequer Bond Deposit Book" containing a certificate of the holder's title to registered Exchequer Bonds acquired through the Post Office delivered the Exchequer Bond deposit book before his death to the defendant by way of gift, *Held* that the delivery of the book was a good donatio mortis causa.

JOTTINGS AND CUTTINGS.

Lord Ellenborough.—On one occasion Ellenborough was under the necessity of listening to an advocate who had the reputation of being a sound lawyer but a terrible bore. The question before the Court was the ratability of certain lime-quarries for relief of the poor. Counsel contended, at a wearisome length, that such property was not rateable, because the lime stone in the quarries could be reached only by deep boring, which was a matter of science,

"Well," interrupted his Lordship, "you will hardly succeed in convincing us, sir, that every species of boring is a matter of science."

To the surgeon in the witness box who said : "I employ myself as a surgeon," Ellenborough retorted, "But does any one else employ you as a surgeon."

A Westminister volunteer corps, whilst exercising in Tothill Fields, being overtaken by a violent storm of wind and rain, took shelter in Westminister Hall, while Ellenborough was presiding in the Court of the Kings Bench. Ellenborough said : "What is the meaning of that disturbance ?" "My Lord" said the usher, "it is a volunteer regiment exercising." "Exercising !" said Ellenborough, "we will see who is best at that. Go to the regiment and inform it that if it depart not instantly, I will give into the custody of a tipstaff."

When Randle Jackson, who despised technicalities and relied on his eloquence, began his argument. "In the book of Nature it is written,"—Ellenborough broke in, "Be good enough, sir, to mention the page from which you are about to quote."

To Mr. Preston, the famous conveyancer, who in arguing a case had not exhausted the "year-books" by evening, and applied to know when it would be their lordships' pleasure to hear the remainder of his argument, Ellenborough replied :

"Mr. Preston, we are bound to hear you, and I hope we shall do so on Friday ; but alas ! pleasure has been long out of the question."

Another tiresome conveyancer having, toward the end of Eastern term, occupied the court an entire day about the *merger of a term*, the chief justice said to him :

"I am afraid, sir, the *term*, although a long one, will *merge* in your argument."

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Epigram.—Lord Erskine, on the removal of a distinguished counsellor from a house in Red Lion Square and an iron-monger becoming its occupant, wrote :

This house, where once a lawyer dwelt,
Is now a smith's. Alas !
How rapidly the iron age
Succeeds the age of brass !

CONTEMPORARY LEGAL LITERATURE.

In the *Harwad Law Review*, for November, there is an exhaustive treatment of the various legal theories on which *letters of credit* a recognised mode of legal business are based under the various systems. They are recognised in the French and German systems of law. In them they are based on the doctrine of mandate and the right of re-imbursement of the mandatory. Under the English system, they are regarded as *offers* acting on which leads to liability on the principle of contract, estoppel, and so forth. The writer thinks that the English Law has not yet developed a consistent scientific theory. In the same part, there are also certain reflections by Oliver Wendell Holmes on Natural Law. He says that the jurists who believe in Natural Law seem to be in that naive state of mind that accepts what has been familiar and accepted by them and their neighbours as something that must be accepted by all men everywhere. No doubt behind the legal rights is the fighting will of the subject to maintain them and the spread of his emotions to the general rules by which they are maintained but that is not the same thing as the supposed a *priori* discernment of a duty or the assertion of a pre-existing right.

Professor Keith writing in the "*Canadian Law Times*" for November points out that too much stress has been laid down on the novelty of the decision of the Imperial War Cabinet to confer upon the Prime Ministers of the Dominions the right to communicate on matters of cabinet importance direct with the Prime Minister and to accord to the Dominion Governments the right to nominate a visiting or a resident Minister in London to be a member of the Imperial Cabinet at meetings other than those attended by the Prime Minister. In fact the policy is no more than an adaptation with the necessary modifications to war conditions of the proposals made by Mr. Lewis Harcourt on behalf of the Government of the United Kingdom.

Undoubtedly as Mr. Mayers writes, one of the subjects in which clearness, precision and certainty valid have seemed eminently desirable is practice and procedure and yet it presents so many complexities and Mr. Mayers points to some of them which have arisen in spite of the apparent clearness of the rules. Another writer speaks of the legislative chaos in Canada owing to deficient care taken in the drafting of laws and owing to the number of the legislative bodies and the system by piecemeal legislation. He suggests revision and consideration as absolutely necessary.